

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RAYMOND L. HAMLETT,

Plaintiff,

v.

No. CIV-15-0725 RB/LAM

**NANCY A. BERRYHILL, Acting Commissioner
of the Social Security Administration,**

Defendant.

**ORDER GRANTING UNOPPOSED MOTION FOR ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on Plaintiff's *Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, With Memorandum in Support* (Doc. 31), filed on February 20, 2017, wherein Plaintiff asks for an award of **\$5,668.64** in attorney fees. No response to the motion has been filed, and the time for doing so has passed, which constitutes consent to grant the motion. *See D. N.M. LR-Civ. 7.1(b)* ("The failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion."). Having considered the motion, the record in this case, and relevant law, the Court **FINDS** that the motion shall be **GRANTED**.

IT IS THEREFORE ORDERED that Plaintiff's *Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, With Memorandum in Support* (Doc. 31) is **GRANTED**, and Plaintiff is authorized to receive **\$5,668.64** in attorney fees for payment to Plaintiff's attorney for services before this Court, as permitted by the Equal Access to Justice Act, 28 U.S.C. § 2412, and in accordance with *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007).

IT IS FURTHER ORDERED that, if Plaintiff's counsel is ultimately granted attorney fees pursuant to 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's attorney shall refund the smaller award to Plaintiff pursuant to *Astrue v. Ratliff*, 560 U.S. 586, 596 n.4 (2010) (explaining that, if a claimant's counsel is ultimately granted attorney fees under § 406(b) out of the claimant's benefit award, the claimant's attorney must refund to the claimant the amount of the smaller fee).

IT IS SO ORDERED.


LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE